

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 928

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR THE ALLOCATION OF QUALIFIED SCHOOL CONSTRUCTION
BONDS AS AUTHORIZED IN THE FEDERAL AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009; AUTHORIZING QUALIFIED SCHOOL
CONSTRUCTION BONDS AND BUILD AMERICA BONDS TO BE SOLD AT A
PUBLIC OR PRIVATE SALE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this
act may be cited as the "Qualified School Construction Bonds
Act"."

Section 2. A new section of the Public School Code is
enacted to read:

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underscoring material = new
[bracketed material] = delete

1 "[NEW MATERIAL] DEFINITIONS.--As used in the Qualified
2 School Construction Bonds Act:

3 A. "allocation" means New Mexico's allocation of
4 the national qualified school construction bond limitation
5 pursuant to Section 1521 of the federal American Recovery and
6 Reinvestment Act of 2009;

7 B. "council" means the public school capital outlay
8 council;

9 C. "eligible taxpayer" means an entity that
10 qualifies as an eligible taxpayer under the Internal Revenue
11 Code of 1986, as amended, and may include a bank, insurance
12 company or corporation actively engaged in the business of
13 lending money;

14 D. "qualified school construction bond" means a
15 bond issued by the state or a school district that meets all of
16 the requirements of Section 3 of the Qualified School
17 Construction Bonds Act and the requirements for a qualified
18 school construction bond pursuant to Section 1521 of the
19 federal American Recovery and Reinvestment Act of 2009; and

20 E. "qualifying school" means a public school, a New
21 Mexico state educational institution providing education or
22 training below the post-secondary level or a program within
23 such a public school or educational institution and which
24 school, institution or program meets the requirements of
25 Section 1521 of the federal American Recovery and Reinvestment

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1 Act of 2009."

2 Section 3. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] QUALIFIED SCHOOL CONSTRUCTION BONDS--
5 DESIGNATION--TERMS--SALE.--

6 A. The state or a school district that has been
7 authorized to issue bonds may designate all or any part of the
8 bonds as qualified school construction bonds if:

9 (1) one hundred percent of the available
10 project proceeds from the issuance of the bonds are to be used
11 for the construction, rehabilitation or repair of a qualifying
12 school facility or for the acquisition of land on which such a
13 facility is to be constructed with part of the proceeds;

14 (2) the bonds are issued by the state or a
15 school district within the jurisdiction in which the qualifying
16 school is located; and

17 (3) the issuer designates the bonds as
18 qualified school construction bonds.

19 B. Notwithstanding any law requiring bonds to be
20 sold at a public sale, qualified school construction bonds may
21 be sold at a public or private sale to eligible taxpayers.

22 C. In addition to any other requirement of law
23 applicable to the term of the bonds, qualified school
24 construction bonds shall not be issued for a term longer than
25 the term fixed pursuant to the Internal Revenue Code of 1986,

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1 as amended, and applicable state law."

2 Section 4. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] ALLOCATION.--

5 A. The aggregate face amount of all qualified
6 school construction bonds issued in a calendar year shall not
7 exceed the allocation for that year.

8 B. Except for the portion of the allocation
9 required by Section 1521 of the federal American Recovery and
10 Reinvestment Act of 2009 to be made to particular school
11 districts, the council is designated the state education agency
12 responsible for ensuring compliance with the limitation of
13 Subsection A of this section.

14 C. If the state or a school district desires to
15 designate bonds as qualified school construction bonds, it
16 shall, by July 1 of the calendar year in which the bonds are to
17 be issued, submit an application for reservation of an
18 allocation to the council. The application shall include
19 evidence that the requirements of Paragraphs (1), (2) and (3)
20 of Subsection A of Section 3 of the Qualified School
21 Construction Bonds Act have been satisfied; provided, however,
22 that any school district to which a direct allocation is made
23 pursuant to Section 1521 of the federal American Recovery and
24 Reinvestment Act of 2009 shall be exempt from the application
25 requirement to the extent that the amount of qualified school

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1 construction bonds to be issued by that district does not
2 exceed the direct allocation.

3 D. If, for a calendar year, the allocation for that
4 year exceeds the amount of qualified school construction bonds
5 designated and issued in that year, the excess shall be carried
6 forward and included in the allocation for the subsequent year.

7 E. In the event that the face amount of all
8 proposed qualified school construction bonds for a calendar
9 year exceeds the allocation remaining after deducting the
10 direct allocations made to particular school districts pursuant
11 to Section 1521 of the federal American Recovery and
12 Reinvestment Act of 2009, the council shall ratably apportion
13 the remaining allocation among the state and school districts
14 that have timely filed valid applications for that year;
15 provided, however, that the apportionment shall not reduce the
16 direct allocation to any particular school district pursuant to
17 Section 1521 of the federal American Recovery and Reinvestment
18 Act of 2009."

19 Section 5. Section 6-15-5 NMSA 1978 (being Laws 1929,
20 Chapter 201, Section 3, as amended) is amended to read:

21 "6-15-5. SALE OF BONDS.--

22 A. Before any bonds issued by a municipal
23 corporation are offered for public sale, the corporate
24 authorities issuing the bonds shall designate the maximum net
25 effective interest rate the bonds shall bear, which shall not

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1 exceed the maximum permitted by the Public Securities Act.
2 Except as provided in Subsection B or C of this section and in
3 Sections 6-18-6, 6-18-7 and 6-21-9 NMSA 1978, all the bonds
4 shall be offered and sold at public sale pursuant to this
5 section.

6 B. Bonds maturing in less than thirty days may be
7 sold at private sale to the state of New Mexico at the price
8 and upon such terms and conditions as a municipal corporation
9 and the state of New Mexico may determine.

10 C. Notwithstanding any law requiring bonds to be
11 sold at a public sale, the following bonds may be sold at a
12 public or private sale:

13 (1) bonds designated as build America bonds
14 pursuant to Section 1531 of the federal American Recovery and
15 Reinvestment Act of 2009; and

16 (2) qualified school construction bonds issued
17 pursuant to the Qualified School Construction Bonds Act and
18 Section 1521 of the federal American Recovery and Reinvestment
19 Act of 2009.

20 [~~G.~~] D. A notice calling for bids for the purchase
21 of the bonds shall be published once at least one week prior to
22 the date of the sale in a newspaper having local circulation.
23 The notice shall specify a place and designate a day and hour
24 subsequent to the date of the publication when bids shall be
25 received and publicly opened for the purchase of the bonds.

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1 The notice shall specify the maximum net effective interest
2 rate permitted for the bonds and the maximum discount if a
3 discount is allowed by the governing body and shall require
4 bidders to submit a bid specifying the lowest rate of interest
5 and any premium or discount if allowed by the governing body
6 at, above or below par at which the bidder will purchase the
7 bonds. The bonds shall be sold to the responsible bidder
8 making the best bid determined by the municipal corporation as
9 set forth in the notice, subject to the right of the governing
10 body to reject any and all bids and readvertise. All bids
11 shall be sealed or sent by facsimile or other electronic
12 transmission to the municipal corporation as set forth in the
13 notice. Except for the bid of the state of New Mexico or the
14 United States, if one is received, all bids shall be
15 accompanied by a deposit of not less than two percent of the
16 principal amount of the bonds, either in the form of a
17 financial security bond or in cash or by cashier's or
18 treasurer's check of, or by certified check drawn on, a solvent
19 commercial bank or trust company in the United States, which
20 deposit shall be returned if the bid is not accepted. The
21 financial surety bond or the long-term debt obligations of the
22 issuer or person guarantying the obligations of the issuer of
23 the financial surety bond shall be rated in one of the top two
24 rating categories of a nationally recognized rating agency,
25 without regard to any modification of the rating, and the

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1 financial surety bond must be issued by an insurance company
2 licensed to issue such a bond in New Mexico. If the successful
3 bidder does not complete the purchase of the bonds within
4 thirty days following the acceptance of [~~his~~] the bidder's bid
5 or within ten days after the bonds are made ready and are
6 offered by the municipal corporation for delivery, whichever is
7 later, the amount of [~~his~~] the bidder's deposit shall be
8 forfeited to the municipal corporation issuing the bonds, and,
9 in that event, the governing body may accept the bid of the
10 bidder making the next best bid. If all bids are rejected, the
11 governing body may readvertise the bonds for sale in the same
12 manner as for the original advertisement or sell the bonds at
13 private sale to the state of New Mexico or the United States.
14 If there are two or more equal bids and the bids are the best
15 bids received, the governing body shall determine which bid
16 shall be accepted.

17 [~~D.~~] E. Except as provided in this section, bonds
18 to be issued by a municipal corporation for various purposes
19 may be sold and issued as a single combined issue even though
20 they may have been authorized by separate votes at an election
21 or elections. Bonds authorized by any city, town or village
22 for the construction or purchase of a system for supplying
23 water, a sanitary sewer system or a storm sewer system may be
24 combined with each other and sold and issued as a single issue
25 but may not be combined with bonds to be issued for any other

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1 purpose that may be subject to the debt limitation of Article
2 9, Section 13 of the constitution of New Mexico."

3 Section 6. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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